

STATE OF DELAWARE

REQUEST FOR PROPOSALS & EXPRESSIONS OF INTEREST CONSULTING SERVICES FOR PROFESSIONAL SERVICES FOR

“Delaware Bay Dikes Repair and Prevention Project”

ISSUED BY The New Castle Conservation District (NCCD)

I. Overview

The State of Delaware and NCCD seeks geotechnical engineering services. This request for proposals (“RFP”) is issued pursuant to 29 *Del. C.* §§ 6981 and 6982.

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: September 26, 2011
Deadline for Receipt of Proposals	Date: October 20, 2011
Notification of Award	Date: December 9, 2011

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The State of Delaware and NCCD reserves the right to deny any and all exceptions taken to the RFP requirements.

II. Scope of Services

The New Castle Conservation District is seeking to establish consultant support for the State of Delaware Dikes Repair and Prevention Project (Dikes Project).

The goal of the Dikes Project is to provide for the inspection, analysis, engineering, design and construction of improvements to as many of the following five dikes as funding allows. The dikes are listed in the order of priority:

- 1) Red Lion Dike;
- 2) City of New Castle Dikes
 - a) Buttonwood Dike;
 - b) Broad Dike;
 - c) Gambacorta Dike; and
- 3) Army Creek Dike.

Services being sought under this scope of work are related to the planning, technical review, engineering, preliminary and final design plans, and engineer(s) cost of construction estimates of the five dikes listed above.

It is expected that the preliminary and final design plans and cost of construction estimates will be for structural improvements to the five dikes rather than for the repair or replacement of the existing flood gate/water control structure(s) unless the technical and engineering review determines that the repair and/or replacement of the flood gate/water control structure is integral to the repair and improvement to the dike(s).

Specific tasks may include but not be limited to the following:

- Preparing field inspection reports, preparing geotechnical studies and/or reports, including subsurface investigations and/or borings (note: field inspection reports prepared in January 2011 by Greenstone Engineering for the three dikes located within the City of New Castle are currently available at: <http://www.dnrec.delaware.gov/coastal/Pages/CityofNewCastle.aspx>)
- Proposed design improvements for the five dikes will be based on the standards required for the five dikes to be eligible for inclusion within the United States Army Corps of Engineers (USACE) Levee Safety Program (PL84-99). Refer to: USACE Levee Owner’s Manual for Non-Federal Flood Control Works – The Rehabilitation and Inspection Program at: http://www.usace.army.mil/LeveeSafety/KeyDocuments/Pages/lev_keydocs.aspx

- Proposed preliminary, semi-final and final design improvements must consider the DNREC Sea Level Rise Policy for incorporating the direct and indirect physical effects of potential sea-level rise scenarios in managing, planning, engineering, designing, constructing, operating, and maintaining USACE projects and systems of projects. The DNREC Sea Level Rise Policy is available at:
<http://www.dnrec.delaware.gov/coastal/Documents/SeaLevelRise/Final%20and%20Signed%20DNREC%20SLR%20scenarios.pdf>
- Preparing preliminary, semi-final, and final design plans (and specification(s) and engineer's cost of construction estimates for five dikes;
- Preparing draft and final operation and maintenance plan(s) and schedule(s) for five dikes;
- Attending all meetings and/or hearings as well as providing any and all necessary documents (e.g.; applications, submissions, documents & exhibits) for any, and all federal, state, and/or municipal environmental review(s), approvals and/or permit(s) as required;
- Conducting the necessary public information and community involvement meetings for the five dike projects. This task shall may include the staffing, planning, designing, preparation, publication and distribution of materials for the meetings as well as all necessary meeting materials and exhibits;
- Providing ongoing coordination with NCCD, DNREC, the City of New Castle's Dike Committee and individual landowners of properties on which dike infrastructure is located;
- Preparing project status and tracking reports as directed by NCCD;
- Other services that might be deemed necessary by NCCD to plan, engineer, design and/or prepare for the construction improvements of the five dikes.

In addition to the above, the NCCD will require that a consultant/project team for assignment be established. The project team should include experienced engineers having the required State of Delaware licenses, registrations and/or certificates. The consultant/project team should be prepared to provide additional expertise related to land surveying, environmental studies, geo-technical and structural engineering and/or analysis. The project team must be employees of the primary consultant or sub-consultants as approved by NCCD in consultation with the State of Delaware.

The successful consultant(s) should also have a thorough knowledge of Federal and Delaware design standards, specifications and requirements, as well as a thorough knowledge of the Federal USACE Levee Safety Program (PL84-99) and State of Delaware Dam Safety Program guidelines.

III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Delaware business license:
Provide evidence of a Delaware business license or evidence of an application to obtain the business license.
2. Professional liability insurance:
Provide evidence of professional liability insurance in the amount of \$1,000,000 for each occurrence, \$3,000,000 aggregate.
3. General Insurance:
Provide evidence of comprehensive general liability insurance in the amount of \$1,000,000.

B. General Evaluation Requirements

1. Experience and Reputation
2. Expertise pertaining to this proposed project such as geotechnical engineering with hydrodynamic considerations, etc.

3. Capacity to meet requirements (size, financial condition, experienced personnel, etc.)
4. Location of the office where work will be performed
5. Demonstrated ability
6. Familiarity with public work and its requirements
7. Distribution of work to individuals and firms or economic considerations
8. Details concerning the Firm's present payroll burden expenses, general overhead costs and normal practice for charging for computer and other such expenses
9. The Firm must have Delaware Business License AND a supervising engineer licensed as a PE in Delaware.
10. Federal Standard Form SF330.
While federal funding will not be utilized for this project, the submission of Form 330 is required with the following limitations: 8 resumes (1 per page), 5 similar projects (1 project per page) and one (1) page additional information)

C. Additional Requirements

The letter portion of the Expression of Interest shall indicate the firms desire to perform services and indicate the specific tasks or areas of expertise, which will be subcontracted, and to whom. Interested firms must submit the material required herein or they will not be considered for the project.

- 1) Please submit the firm's mailing address, phone number, and an e-mail address for the firm's point of contact person on page 1 of the Letter of Interest. Future contacts by NCCD will be done via e-mail, whenever possible.
- 2) The submission should be tabbed and collated in the following order:
 - A. Table of Contents
Table of Contents (1 per set) - Limited to One (1) page on 1 sheet of paper
 - B. Letter of Interest
Letter of Interest (1 per set) - Limited to four (4) pages on two (2) sheets of paper
Indicate the following:
 - (1) An understanding of the anticipated assignments, services required, and approach to providing the services required;
 - (2) Identify who the proposed project manager will be and what office location they will be working from;
 - (3) The location, size, and description of the firm;
 - (4) Availability of personnel for immediate placement;
 - (5) Sub-consultant usage if anticipated. Indicate the percentage of work estimated to be performed by the sub vs. the prime. Also, indicate if the prime consultant has previously worked with the proposed sub and give a brief example of the previous relationship(s).
 - (6) The Prime/Lead consultant must indicate the present workload either as a Prime Consultant or a Sub-Consultant with the State of Delaware and/or NCCD, Project Name, Location, Agreement No. (to include Supplementals), Total Dollar Upset Limit, total paid-to-date, and the amount still available for use on the project(s). Also, include the estimated date of completion. If possible, include the estimated fees for any Delaware project(s) for which your firm has been selected and does not have an executed agreement in place.
 - (7) Provide a listing of contracts with DNREC and/or NCCD for the past five (5) years. Clearly indicate if your firm has not been short listed for a DNREC or NCCD project within the past five (5) years.

C. Project Organization Chart

Project Organization Chart (1 per set) - Limited to one (1) side of one sheet of paper.

D. Architect-Engineer Qualifications

- (1) GSA Form SF330 with limitations as described above
([http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/\\$file/SF%20330.pdf](http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/$file/SF%20330.pdf))
 - a) Personnel by Discipline, the consultant shall document clearly personnel by discipline presently employed at the work location proposed and their availability for assignment to this project.
 - b) If more than one (1) location is being proposed, the consultant must clearly document all locations proposed and show the total number of personnel by discipline for all locations proposed.

E. Key Staff

Is limited to eight (8) individuals who are expected to spend a significant amount of productive time on the project. Staffing information can be either shown as two (2) individuals per page/sheet, or one (1) individual per page/sheet. Resume information presented may pertain to individual(s) that is/are not connected with the Prime/Lead consultant. Resume information is limited to eight (8) individuals regardless of affiliation. Experience listed should be limited to that within the last five (5) years.

If the proposed project personnel have been with the lead firm for less than one (1) year, indicate the name(s) of the previous employer(s) and the length of employment with the previous employer (s) for the last five (5) years.

F. Similar Projects

Shall be limited to five (5) similar projects and shall not exceed one (1) page in length.

G. Additional Information

Shall not exceed one (1) page.

H. References

Provide a list of References who have personal knowledge of the prime consultant's and the sub-consultant's previous performance. Provide three (3) client references each for both the prime and the sub-consultant(s). The references must include verified addresses and telephone numbers, contact persons, and a brief description of services that have been provided similar to those described by NCCD for this project.

References shall be shown on separate sheets (limited to one (1) single-sided sheet; one sheet for the prime and one sheet for each sub proposed). These shall not be included in the four page Letter of Interest.

No promotional materials or brochures to be included as part of the Expression of Interest package.

I. Special Reporting Requirements Provisions

Expressions of Interest must comply with any and all provisions of Section 40 of the "BOND AND CAPITAL IMPROVEMENTS ACT OF THE STATE OF DELAWARE FOR THE FISCAL YEAR ENDING JUNE 30, 2012". Section 40 subjects the funds appropriated for the Dikes Project to be subject to the following provisions:

- (1) Any public works or professional services contract (1) to which any agency, the University of Delaware, Delaware State University, or Delaware Technical and Community College is a party; (2) for which payment shall be funded in whole or in part by monies hereunder; and (3) for which the probable cost is greater than the amount set by the Contracting and Purchasing Advisory Council pursuant to 29 Del. C. § 6913.

- (2) No bid for any contract hereunder shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of (1) the number of employees reasonably anticipated to be employed on the project; (2) the number and percentage of such employees who are bona fide legal residents of the State; (3) the total number of employees of the bidder; and (4) the total percentage of employees of such bidder who are bona fide residents of the State. To the extent subcontractors are to be employed in connection herewith, the bidder shall further disclose its reasonable, good-faith determination of the number and percentage of employees of such subcontractor who are bona fide legal residents of the State.
- (3) All contractors awarded contracts hereunder shall submit a report to the Director of the Office of Management and Budget setting forth the actual number and percentage of employees of such contractor who are bona fide legal residents of the State. To the extent subcontractors are employed in connection with any such contractor, the contractor shall further disclose the actual number and percentage of employees of such subcontractor who are bona fide legal residents of the State. Such report shall be due on the earlier of 30 days from the completion of the project or December 31 of each calendar year.
- (4) For purposes of this section, "bona fide legal resident of this State" shall mean any resident who has established residence of at least 90 days in the State.
- (5) Notwithstanding anything to the contrary herein, this section shall not apply to any contract for which any exception would apply pursuant to 29 Del. C. § 6904. Without limitation of the foregoing, if any provision of this section conflicts or is inconsistent with any statute, rule or regulation of the federal government applicable to a project or activity, the cost of which is to be paid or reimbursed in whole or in part by the federal government, and due to such conflict or inconsistency the availability of federal funds may be jeopardized, such provision shall not apply to such project or activity. Further, if any provisions of this section conflict or are inconsistent with 31 Del. C. c. 40, the provisions of 31 Del. C. c. 40 shall prevail and govern.

IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form [only] through the NCCD website at <http://newcastleconservationdistrict.org/> and <http://bids.delaware.gov/>

Paper copies of this RFP will be available by contacting:

Ms. Diane Fernandes
New Castle Conservation District
2430 Old County Road
Newark, DE 19702

2. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* § 6981.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing via email to the NCCD contact indicated below. Communications made to other State of Delaware or NCCD personnel or attempting to ask questions by phone or in person will not be allowed or

recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Kevin Donnelly
New Castle Conservation District
2430 Old County Road
Newark, DE 19702
Kevin.donnelly@state.de.us

Questions received and the NCCD's response will be provided on the NCCD Website:
<http://www.newcastleconservationdistrict.org/> Shortlist and Selection Committee membership appointments are confidential.

5. Consultants and Legal Counsel

The State of Delaware and NCCD may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

6. Contact with State or NCCD Employees

Direct contact with State of Delaware or NCCD employees other than the NCCD Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware or NCCD employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;

- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP/Expressions of Interest Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with **6 paper copies and 1 electronic copy (PDF) on CD.**

Receipt of insufficient copies of the Expression of Interest and non-compliance with providing the requested information in the desired format may result in elimination from the overall shortlist and selection process.

All properly sealed and marked proposals are to be sent to the NCCD and received no later than **3:00 PM Local Time on October 20, 2011**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

**Attn: Delaware Bay Dike Project Coordinator
C/o Ms. Diane Fernandes
New Castle Conservation District
2430 Old County Road
Newark, DE 19702**

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **3:00 PM Local Time on October 20, 2011**. RFPs/Expressions of Interest arriving after the deadline will be rejected regardless of the reason for late arrival. NCCD's time is considered the official time for determining the cut-off for accepting RFP/Expressions of Interest submissions. The proposing vendor bears the risk of delays in delivery

Facsimile responses to this RFP are not acceptable. No response hand-delivered or otherwise will be accepted after the above date and time.

The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

3. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Proposal Costs and Expenses

Neither the State of Delaware nor the NCCD will pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

5. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through June 1, 2012. The State of Delaware and NCCD reserves the right to ask for an extension of time if needed.

6. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

7. Proposal Opening

The NCCD will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the NCCD personnel.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing vendors prior to contract award.

8. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the NCCD and State of Delaware.

9. Concise Proposals

The State of Delaware and NCCD discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware and NCCD's interest is in the quality and responsiveness of the proposal.

10. Realistic Proposals

It is the expectation of the State of Delaware and NCCD that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware and NCCD shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

11. Confidentiality of Documents

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware and NCCD Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 *Del. C.* Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and NCCD and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 *Del. C.* § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware and NCCD will open the envelope to determine whether the procedure described above has been followed.

12. Multi-Vendor Solutions (Joint Ventures)

Joint venture submissions will not be considered.

13. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware and NCCD.

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

14. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware and NCCD's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

The State of Delaware and NCCD will allow certain questions to clarify the RFP. These questions may be submitted by email to the NCCD'S Designated Contact. The State of Delaware and NCCD reserves the right not to respond to questions that are not aimed at clarifying the RFP.

15. Right to Reject Proposals

The State of Delaware and NCCD reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware and NCCD's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware and NCCD may deem necessary in the best interest of the State of Delaware and NCCD.

16. Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware and NCCD makes no commitments expressed or implied that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware or NCCD. Vendor's participation in this process may result in the State of Delaware and NCCD selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware and NCCD to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

17. Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* § 6986, a contract maybe awarded for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware and NCCD.

18. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the NCCD prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware and NCCD at the proposal submission deadline. All proposals received are considered firm offers at that time. State of Delaware and NCCD shall be retained for a period not to exceed 45 days from the date of the approved shortlist. The State of Delaware and NCCD reserves the right to any and all ideas included in this response without incurring any obligations to the responding firms or committing to procurement of the proposed services.

19. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the NCCD website at <http://www.newcastleconservationdistrict.org/> and the State of Delaware's website at <https://bids.delaware.gov>.

The State of Delaware and NCCD are not bound by any statement related to this RFP made by any State of Delaware and NCCD employee, contractor or its agents.

20. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware and NCCD's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the evaluation committee.

21. Award of Contract

The final award of a contract is subject to approval by the State of Delaware and NCCD. The State of Delaware and NCCD has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and NCCD and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware and NCCD will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware and NCCD are not obligated to award the contract to the vendor who submits the lowest bid of the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware and NCCD. The award is subject to the appropriate State of Delaware and NCCD approvals.

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware and NCCD will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware and NCCD reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware and NCCD may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware and NCCD. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

The proposals all contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware and NCCD to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP

may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 Del. C. §6986. Such selection will be based on the following criteria:
 - Vendors will be ranked on criteria indicated below.
 - If more than one vendor ranks highly on portions of scope of work, the NCCD may select those vendors that would best be able to complete select portions of the proposed work.
 - If multiple vendors are chosen, each vendor will have defined scopes of services but may be asked to coordinate with the other(s).

a. Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Evaluation Team to evaluate proposals:

Criteria	Weight
1) Key Staff/Project Team qualifications	20
2) Firm resources/capability to accomplish proposed work on schedule	20
3) Experience on similar projects	20
4) Project understanding, approach, and services required	20
5) Location(s) where work will be initiated from (to include subcontractor/subconsultant locations, if applicable).	10
6) Completeness of submissions to include clarity, readability, and presentation of material.	10
Total	100%

3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware and NCCD may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware and NCCD will pay travel costs only for State of Delaware and NCCD personnel for these visits, respectively.

5. Pre-Selection Meeting and Oral Presentations

Based on criteria ranking as indicated above, selected vendors may be asked to attend a mandatory meeting for a briefing and an opportunity to ask questions.

Selected vendors may then be invited to make written submission and/or attend oral interview sessions with the Evaluation Team, after which the committee will determine the successful

candidate. The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components.

All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware and NCCD are the vendor's responsibility.

After the selection process has been completed, applicable price information will be requested from the successful candidate; i.e. salary rates for various classifications of personnel, and an indirect cost derivation for the most current accounting period. It is expected that all firms submitting are prepared for the work and include necessary work materials in their overhead rates. If an interested firm is requested to submit a priced proposal, the proposal should substantially reflect the same composition and area of involvement as the RFP submission.

Payroll burden and overhead will be computed on direct salary costs only (not including overtime) at the consultant's audited rate, as per Federal Acquisition Regulations Part 31, and Department policies. Computer and CADD costs are not allowable as a direct cost to this project. Rate determination and applicability is subject to audit by the State of Delaware and NCCD.

Additionally, candidates should be prepared for the State of Delaware and NCCD to work with your current accounting firm to provide information and backup documentation. Full and immediate cooperation is required to avoid delays in execution of an agreement. Failure to cooperate may result in breaking off of negotiations and moving to the next ranked firm.

V. Contract Terms and Conditions

1. General Information

- a. The term of the contract between the successful bidder and the State and NCCD shall be for one (1) year with 1 extension for a period of one (1) year for each extension.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware and NCCD. The State of Delaware and NCCD reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements.
- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware and NCCD, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.
- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.

- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware or NCCD participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware or NCCD employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware and NCCD shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware and NCCD employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

4. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware or NCCD to leave their employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware or NCCD employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware or NCCD employee who has initiated contact with the vendor. However, State of Delaware and NCCD employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

5. General Contract Terms

a. Independent contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all

applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party, or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware or NCCD's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware or NCCD shall provide working space and sufficient supplies and material to augment the Contractor's services.

b. Non-Appropriation

In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State or NCCD requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware and NCCD with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

**Kevin Donnelly
New Castle Conservation District
2430 Old County Road
Newark, DE 19702
RE: Dikes Project RFP**

e. Indemnification

1. General Indemnification.

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware and NCCD, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, ole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware and NCCD shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware and NCCD against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- (a) Procure the right for the State of Delaware and NCCD to continue using the Product(s);
- (b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- (c) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware and NCCD agrees to and accepts in writing.

f. Insurance

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware or NCCD.
3. During the term of this contract, the vendor shall, at its own expense, carry insurance minimum limits as follows:

a.	Comprehensive General Liability	\$1,000,000
b.	Professional Liability/Misc. Error & Omissions/Product Liability	\$1,000,000/\$3,000,000

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverages, secure at its own expense the following coverage:

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

4. The vendor shall provide a certificate of insurance as proof that the vendor has the required insurance.

g. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h. Warranty

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State and NCCD's requirements.

i. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware and NCCD. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware and NCCD will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware and NCCD may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

j. Penalties

The State of Delaware and NCCD may include in the final contract penalty provisions for non-performance, such as liquidated damages.

k. Termination for Cause.

If for any reasons, or through any cause, the Vendor fails to fulfil in timely and proper manner his obligations under the contract, or if the Vendor violates any of the covenants, agreements or stipulations of the contract, the State of Delaware and NCCD shall thereupon have the right to terminate the contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware and NCCD, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware and NCCD.

l. Termination for Convenience

The State of Delaware and NCCD may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Vendor under the contract shall, at the option of the State of Delaware and NCCD, become its property, and the Vendor shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the State of Delaware and NCCD. If the contract is terminated by the State of Delaware and NCCD as so provided, the Vendor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Vendor as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services

covered by the contract have been performed upon the effective date of termination, the Vendor shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Vendor during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

m. Non-discrimination

In performing the services subject to this RFP the vendor will agree that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware and NCCD shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

o. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

p. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State and NCCD. The vendor will seek written permission to use any product created under the contract.

q. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and NCCD and the successful vendor shall constitute the contract between the State of Delaware and NCCD and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and NCCD and the vendor.

r. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

- (1) the laws of the State of Delaware;
- (2) the applicable portion of the Federal Civil Rights Act of 1964;
- (3) the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
- (4) a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and

- (5) that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware and NCCD reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

s. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

t. Other General Conditions

- (1) **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
- (2) **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
- (3) **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
- (4) **Prior Use** – The State of Delaware and NCCD reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware and NCCD.
- (5) **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
- (6) **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
- (7) **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware and NCCD.
- (8) **Additional Terms and Conditions** – The State of Delaware and NCCD reserve the right to add terms and conditions during the contract negotiations.

VI RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

Vendors may not release any information about this RFP. The State of Delaware and NCCD reserves the right to pre-approve any news or advertising releases concerning this RFP, the resulting contract, the work performed, or any reference to the State of Delaware and NCCD with regard to any project or contract performance. Any such news or advertising releases pertaining to this RFP or resulting contract shall require the prior express written permission of the State of Delaware and NCCD.

2. RFP Reference Library

The State of Delaware has made every attempt to provide the necessary information within this RFP. The State of Delaware and NCCD will make the reference library available only to the winning bidder.

3. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

4. Production Environment Requirements

The State of Delaware and NCCD require that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

VII SUBCONTRACTS:

Subcontracting is permitted under this RFP and contract. However, every subcontractor shall be identified in the Proposal and agreed to in writing by the State of Delaware and NCCD or as are specifically authorized in writing by the Agency during the performance of the contract. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior written approval of the State.

The Vendor(s) shall be responsible for compliance by the subcontractor with all terms, conditions and requirements of the RFP and with all local, State and Federal Laws. The Vendor shall be liable for any noncompliance by any subcontractor. Further, nothing contained herein or in any subcontractor agreement shall be construed as creating any contractual relationship between the subcontractor and the State of Delaware and NCCD

VIII AGENCY'S RESPONSIBILITIES

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Vendor to the Agency and render to the Vendor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Vendor.
- b. Give prompt written notice to the Vendor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Vendor's services.

IX CONTRACT DOCUMENTS:

The Definitions and General Provisions and any Special Instructions, Specifications, Request for Proposal, Proposal, Purchase Order, and Contract shall be a part of and constitute the entire Agreement entered into by the State of Delaware and NCCD and any Vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Purchase Order
- Special Instruction
- Specifications or Scope of Work
- Proposal
- Definitions & General Provisions
- Request for Proposal

X NOTICE

Any notice to the State of Delaware and NCCD required under the contract shall be sent by registered mail to:

NAME: Kevin Donnelly
DEPARTMENT: New Castle Conservation District
ADDRESS: 2430 Old County Road
Newark, Delaware 19702

VENDOR EMERGENCY RESPONSE POINT OF CONTACT:

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan dated November 2009 or in the event of a local emergency or disaster where a governmental entity other than a State Agency requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

AWARD AND EXECUTION OF CONTRACT

1. **CONSIDERATION OF PROPOSALS:**

The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to seek new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. **MATERIAL GUARANTY:**

Before any contract is awarded, the successful Vendor may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

3. **AWARD OF CONTRACT:**

Within ninety (90) days from the date of opening proposals, the contract will be awarded or the proposals rejected.

4. **WARRANTY:**

The successful Vendor(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

5. **THE CONTRACT(S):**

The contract(s) with the successful Vendor(s) will be executed with the NCCD acting for all participating governmental entities.

6. **INFORMATION REQUIREMENT:**

The successful Vendor's shall be required to advise and provide NCCD of the gross costs associated with this contract.

XI. PROPOSAL REPLY SECTION for CONTRACT NO. (CONTRACT NUMBER)

Delaware Bay Dikes Repair and Prevention Project

Please fill out the attached forms fully and completely and return with your proposal in a sealed envelope clearly displaying the contract number to the New Castle Conservation District by October 20, 2011 at 3PM at which time bids will be opened.

Proposals must be mailed to:

Attn: Delaware Bay Dike Project Coordinator
C/o Ms. Diane Fernandes
New Castle Conservation District
2430 Old County Road
Newark, DE 19702

NO PROPOSAL REPLY FORM**CONTRACT (CONTRACT NUMBER) TITLE: Dikes Project**

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

1.	We do not wish to participate in the proposal process.
2.	We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:
3.	We do not feel we can be competitive.
4.	We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
5.	We do not wish to sell to the State. Our objections are:
6.	We do not sell the items/services on which Proposals are requested.
7.	Other:_____

FIRM NAME	SIGNATURE
-----------	-----------

STATE OF DELAWARE
NEW CASTLE CONSERVATION DISTRICT

CONTRACT NO.: **(CONTRACT NUMBER)**
TITLE: Dikes Project

Attachment 2

OPENING DATE: September 27, 2011

(i) NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Natural Resources and Environmental Control, Delaware Costal Programs

It is agreed by the undersigned Vendor that the signed delivery of this bid represents the Vendor's acceptance of the terms and conditions of this Request for Proposal including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware and NCCD

COMPANY NAME _____ (Check one)

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE
LICENSE NUMBER _____

(circle one)		(circle one)		(circle one)	
COMPANY CLASSIFICATIONS: CERT. NO. _____	Yes No	Minority Business Enterprise (MBE)	Yes No	Disadvantaged Business Enterprise (DBE)	Yes No

[The above table is for information and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:
(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

STATE OF DELAWARE
NEW CASTLE CONSERVATION DISTRICT

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED WITH YOUR PROPOSAL TO BE CONSIDERED

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

STATE OF DELAWARE

Attachment 3

CONTRACT NO. (CONTRACT NUMBER)

Contract Name: **Dikes Project**

PROPOSAL REPLY SECTION

Proposals must include all exceptions to the specifications, terms or conditions contained in this RFP. If the vendor is submitting the proposal without exceptions, please state so below.

☐ By checking this box, the Vendor acknowledges that they take no exceptions to the specifications, terms or conditions found in this RFP.

[illegible]

Note: use additional pages as necessary.

STATE OF DELAWARE

Attachment 4

CONTRACT NO. (CONTRACT NUMBER)

Contract Name: **Dikes Project**

PROPOSAL REPLY SECTION

☐ By checking this box, the Vendor acknowledges that they are not providing any information they declare to be confidential or proprietary for the purpose of production under 29 *Del. C. Ch. 100*, Delaware Freedom of Information Act.

[illegible]

Note: Add additional pages as needed.

STATE OF DELAWARE

ATTACHMENT 5

If you, the applicant, is a Minority and/or Women Business Enterprise, and would like to be certified with the State of Delaware as such, please fill out and submit the

OMWBE Certification Application:

http://gss.omb.delaware.gov/omwbe/docs/certapp_022510.pdf

Submit the completed application to the address below



Office of Minority and Women Business Enterprise (OMWBE)

100 Enterprise Place Suite # 4 Dover, DE 19904-8202 Telephone: (302) 857-4554 Fax: (302) 677-7086

Email: deomwbe@state.de.us

Website: www.state.de.us/omwbe